

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Facilitating the Provision of Spectrum-Based	)	
Services to Rural Areas and Promoting	)	WT Docket No. 02-381
Opportunities for Rural Telephone Companies	)	
To Provide Spectrum-Based Services	)	
	)	
2000 Biennial Regulatory Review	)	
Spectrum Aggregation Limits	)	WT Docket No. 01-14
For Commercial Mobile Radio Services	)	
	)	
Increasing Flexibility To Promote Access to	)	
and the Efficient and Intensive Use of	)	WT Docket No. 03-202
Spectrum and the Widespread Deployment of	)	
Wireless Services, and To Facilitate Capital	)	
Formation		

To: The Commission

**REPLY COMMENTS OF NEXTEL PARTNERS, INC.**

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## **SUMMARY**

Nextel Partners generally supports the Commission's efforts to facilitate the provision of spectrum based services to rural areas. The most immediate and meaningful opportunity for the Commission to increase service to rural areas is to streamline the ETC designation process for spectrum based providers that are ready and able to enter and operate in rural areas. Bringing meaningful wireless competition to the rural areas, including the addition of competitive ETCs that offer the full panoply of Universal Service supported services, is the best means of ensuring that the rural consumer will have access to telecommunications services that are reasonably comparable to those enjoyed by urban residents.

The Commission's recent initiatives to create a robust secondary market for unused spectrum will allow the marketplace to determine the most efficient use for spectrum and also will help to bring a full range of telecommunications services to the rural consumer. Some of the commenters representing the interests of rural telephone companies in this proceeding favor the imposition of new regulatory requirements on spectrum licensees designed to provide special advantages to rural telephone companies at the expense of other operators. Nextel Partners believes that such rules favoring one type of carrier over another would have the effect of undermining the Commission's work in the *Secondary Markets Rulemaking* proceeding, and would be unlikely to serve the best interests of the rural consumer. To the extent that the Commission imposes any incentives or additional requirements on licensees, it must do so in an even-handed manner that does not favor the interests of one type of carrier over another.

To this end, the Commission should reject the contentions of some commenters that smaller geographic area licenses should be favored over larger geographic area licenses in new spectrum auctions, or that performance benchmarks, construction requirements, or “safe harbors” should be applied differentially based on the size of the geographic license area. In addition, the decision to lease spectrum must be voluntary on the part of the licensee, and should not be coerced or otherwise skewed in favor of rural telephone companies by punitive regulations that have the effect of interfering with the development of a functional secondary market for unused spectrum

Comments submitted in this proceeding that take the position that large wireless carriers do not have sufficient interest in covering rural areas, and that rural telephone companies or other small rural carriers should therefore be accorded special treatment are misguided and refuted by Nextel Partners’ own success as a national carrier with the primary business focus of bringing the full range of wireless services to smaller and rural markets.

Finally, Nextel Partners agrees with the majority of commenters that relaxation of power limits in rural areas is not warranted, because it is more likely to result in harmful interference, coordination difficulties, operational dilemmas and troublesome disputes rather than a meaningful increase in service to the rural consumer.

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**REPLY COMMENTS OF NEXTEL PARTNERS, INC.**

Nextel Partners, Inc. (“Nextel Partners”), by its attorneys, hereby files these Reply Comments in the above-captioned proceeding.<sup>1</sup> As set forth in greater detail below, Nextel Partners supports the development and implementation by the Commission of marketplace solutions that will encourage the entry of wireless carriers into rural areas. Nextel Partners believes that the Commission’s recent regulatory initiatives in the *Secondary Markets Rulemaking* proceeding<sup>2</sup> will have a significant effect on facilitating

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<sup>1</sup> *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, WT Docket No. 02-381; *2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services*, WT Docket No. 01-14; *Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation*, WT Docket No. 03-202, Notice of Proposed Rulemaking, released October 6, 2003 (“Notice” or “NPRM”).

<sup>2</sup> *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the*

access to and deployment of spectrum in all areas, including rural areas. Nextel Partners urges the Commission to avoid implementing additional regulatory strictures in the instant proceeding. Rather, the Commission should allow the marketplace initiatives adopted in the *Secondary Markets Rulemaking* to have a full opportunity to take effect.

In particular, the Commission should reject the self-serving comments submitted by certain interests representing rural telephone companies that suggest the Commission should implement new onerous regulatory requirements and spectrum “take-back” mechanisms that would apply to auctioned spectrum held by large CMRS carriers. Such heavy handed regulation would merely provide an unfair competitive advantage to established rural telephone companies, while undermining the spectrum auction process as well as the ability of wireless carriers to compete efficiently in the rural markets. Any regulations or incentives adopted in this proceeding should be applied in an even-handed manner that does not unduly favor one class of carriers over another.

Rather than imposing burdensome conditions, the Commission should assist wireless carriers in obtaining increased access to capital for provision of service in the rural sector. Most significantly, the Commission should make Universal Service Fund (“USF”) support immediately available to wireless providers that are willing and able to serve rural areas.

**I. The Commission Should Allow and Encourage Market Mechanisms To Determine the Most Efficient Uses of Spectrum in Rural Areas**

Nextel Partners agrees with those commenters recommending that the Commission should refrain from imposing additional performance measures or

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*Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 00-230 (released October 6, 2003) (“*Secondary Markets Rulemaking*”).

construction requirements on licensees in an attempt to compel the provision of service in rural areas.<sup>3</sup> As pointed out by the Commission in its December 20, 2002 *Notice of Inquiry* in WT Docket No. 02-381:

Economic theory predicts that where licensees are in competitive markets, and no market failures exist and transactions costs are sufficiently low, market forces will drive optimal decisions on what is built, where, and when. In that setting, build-out rules arguably would distort resource allocation, or at best be irrelevant.<sup>4</sup>

Rather than attempting to anticipate the market's response and impose government regulations to alter the development of the market, the Commission should focus instead on adopting measures to ensure that markets are competitive and that transaction costs are not artificially inflated by unnecessary regulatory requirements. Nextel Partners believes that the Commission has *already* made substantial progress in this regard, laying the foundation for a robust secondary market that will result in the achievement of the Commission's objectives for service to the rural consumer.

Nextel Partners concurs with AT&T that, at least in the CMRS market, wireless carriers have utilized the flexibility accorded them by the Commission in order to "tailor their spectrum holdings to their actual needs and move underutilized spectrum to its highest and fullest use."<sup>5</sup> There is no question that many rural consumers have already benefited from the Commission's marketplace-oriented initiatives. Indeed, Nextel

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<sup>3</sup> See, e.g., Comments of AT&T Wireless Services, Inc. at 2; Comments of Cellular Telecommunications and Information Association at 6; Comments of Cingular Wireless, LLC at 3-4, 7.

<sup>4</sup> *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, FCC 02-325 (released December 20, 2002) ("*Rural NOI*").

<sup>5</sup> AT&T Wireless Comments at 3-4.

Partners was established specifically for the business purpose of deploying state-of-the-art national wireless service in the smaller markets, including rural areas, and the company has grown from covering about 6,000,000 POPs at the end of 1999 to covering more than 37,000,000 POPs in 31 states with more than 1.05 million subscriber lines.

The recent Commission initiatives in the *Secondary Markets Rulemaking* proceeding will further advance the expansion of service to the rural markets. Thus, rather than trying something *different, i.e.*, imposing additional regulatory strictures that might have the effect of distorting resource allocation and hampering flexibility, the Commission should retain the flexibility afforded by the current rules, and attempt to simplify the regulatory structure even further.

Nextel Partners agrees with Cingular that there is simply no evidence of a CMRS market failure that might warrant the imposition of burdensome regulations designed to spur the deployment of service in rural areas.<sup>6</sup> Certainly no rules should be adopted that might result in the forfeiture of spectrum by a licensee that has *already met* initially established Commission construction benchmarks.<sup>7</sup> Nor should the Commission impose additional requirements for a licensee's renewal term that were not anticipated at the time the license was obtained at auction.<sup>8</sup> Such disruptive shifts in Commission policy would not only be patently unfair, but might well have the untoward effect of compelling wireless carriers to revise their business plans radically to build out portions of their

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<sup>6</sup> See Cingular Comments at 3.

<sup>7</sup> See AT&T Wireless Comments. at 7-8.

<sup>8</sup> See, e.g., AT&T Wireless Comments at 6; Comments of Dobson Communications at 17; CTIA Comments at 6.



territories in a manner that is uneconomic and out of step with marketplace demand.<sup>9</sup> Such obtrusive government involvement into the workings of a free market could even cause some providers to cease providing service in marginally profitable areas in order to avoid costly and uneconomic expansion obligations.<sup>10</sup> A government mandated “take-back” program in rural areas would not assure that any additional or better service to rural consumers would arise, but such a program would undoubtedly involve the Commission in the quagmire of another “finder’s preference” program with endless proceedings and appeals.

## **II. The Commission Should Focus its Efforts on Facilitating Carriers’ Access to Capital and Other Forms of Financial Support and Reducing the Burden of Regulation**

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Rather than attempting to stimulate development of wireless service in the rural areas by imposing burdensome and unnecessary regulations, such as new construction benchmark requirements, the Commission should promote deployment of wireless services through positive incentives and reduced regulatory burdens. One notable way that the Commission can accomplish this is to streamline the process for obtaining Eligible Telecommunications Carrier (“ETC”) status for wireless carriers that provide, or are seeking to provide, service to rural areas.<sup>11</sup>

As established in the record of WT Docket 02-381 by the Universal Service Administrative Company, in 2002, there were only 44 wireless competitive ETCs in operation, with only 29 receiving High Cost Program support.<sup>12</sup> Total subsidies paid to

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<sup>9</sup> See, e.g., Comments of Southern Linc at 8-9.

<sup>10</sup> See, e.g., Cingular Comments at 3-4; CITE

<sup>11</sup> See AT&T Wireless Comments at 10.

<sup>12</sup> See March 25, 2003 Letter and Attached Spreadsheet from Linda J. Miller, Deputy

these wireless ETCs for the provision of Universal Service supported services amounted to less than \$63 million for all categories of High Cost Support combined. This relatively small investment in competitive rural service provision is partially the result of the burdensome, time-consuming and expensive process of ETC designation, as well as the fact that, until recently, the Commission held the consideration of ETC petitions before it in abeyance for nearly a year. Nextel Partners is pleased that the Commission, in its recent grant of ETC status to Virginia Cellular, LLC<sup>13</sup> has adopted a framework for analyzing the public interest standard for ETC applications. Now that this standard has been adopted, Nextel Partners urges the Commission to move forward with consideration of all ETC applications on an expedited basis. Nextel Partners recommends that the Commission work to streamline ETC designation, and devote the resources necessary to ensure that pending applications are processed without further delay.

As set forth in Nextel Partners' initial comments, the Commission should also continue to investigate new ways to improve the economics of serving rural territories, for example, by working with the Department of Agriculture, and if necessary, Congress, to expand loan programs and loan guarantees to a broad range of carriers bringing their services to rural America. The existing RUS loan program that benefits only rural telephone companies and the broadband initiative that benefits only broadband providers with high transmission rates do not sufficiently address the needs of rural consumers for competitive mobile voice services.

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General Counsel of Universal Service Administrative Company in WT Docket 02-381.

<sup>13</sup> See *In the Matter of Federal-State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004) ("*Virginia Cellular*").

Reduced regulatory burdens will also further the development of wireless services in the rural areas. For example, the Commission should, to the extent possible, remove impediments to infrastructure sharing, and clarify that such sharing does not trigger any control issues under *Intermountain Microwave*.<sup>14</sup>

### **III. The Marketplace Policies Set Forth in the *Secondary Markets Rulemaking Proceeding* Will Lead to Further Development of Wireless Services in Rural Areas**

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Nextel Partners firmly believes that the recent marketplace policies adopted by the Commission in the *Secondary Markets Rulemaking* proceeding will allow access to unused or underutilized spectrum and will promote efficient use of spectrum in rural areas, which in turn will lead to development of services in the rural markets. At the very least, these newly adopted marketplace policy initiatives should be allowed to take effect and to mature before the Commission considers imposing burdensome regulatory oversight as an alternative. Nevertheless, many of the local telephone companies seek extensive Commission regulation in order to obtain special treatment for themselves. Such policies if put in place would undermine the auction process, jeopardizing hundreds of millions of dollars in investment by wireless companies and their shareholders.

The local telephone interests advocate the imposition of a “keep what you use” approach to licensed spectrum, allowing for the reclamation of portions of spectrum that are unused at the mid-point or end of a license term.<sup>15</sup> In order to achieve this result, OPASTCO/RTG suggests a complex, multi-step process involving extensive Commission oversight. At the very least, it involves: (i) the assessment of whether the

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<sup>14</sup> See Cingular Comments at 6; *Intermountain Microwave*, 12 FCC 2d 559 (1963).

<sup>15</sup> See, e.g., Rural Cellular Association (“RCA”) Comments at 6; OPASTCO/RTG Comments at 4..

subject spectrum is properly “used,” (ii) whether appropriate deadlines were met by the licensee (or waived by the Commission), (iii) the determination of whether to “reclaim” the spectrum, (iv) reclaiming the spectrum and dealing with any controversy or litigation that may arise as a result, (v) re-assigning the spectrum to one or more new licensees through another regulatory process, and (vi) waiting to see whether the new licensees actually provide the desired wireless service to the indicated rural territory.

Nextel Partners concurs with Dobson Communications that such a reversion to the “keep what you use” licensing approach would not advance the Commission’s objectives for increasing service to the rural sector, because it would inevitably encourage litigation, increase filing requirements, greatly delay the ultimate deployment of services, and undercut the development of the secondary markets that the Commission is attempting to foster.<sup>16</sup> It is unlikely that such a process would dependably have the effect of speeding wireless service to the rural consumer.

The Blooston Law Firm (“BLF”) contends that the Commission should create financial incentives to encourage large licensees to enter into partitioning and disaggregation transactions with rural carriers,<sup>17</sup> but ostensibly only when a licensee enters into a long-term, binding lease agreement with a *rural telephone company* or its subsidiary.<sup>18</sup> Such a regulation would unfairly and unnecessarily impact marketplace forces in the rural markets. No single class of carrier should be favored over another.

Wireless licensees should be free to make marketplace agreements with all potential lessors and the Commission should not artificially skew the spectrum markets in

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<sup>16</sup> See Dobson Communications Comments at 15.

<sup>17</sup> BLF Comments. at 12.

<sup>18</sup> *Id.* at 14.

favor of rural telephone companies at the expense of other carriers interested in serving rural areas. Indeed, there is simply no basis for assuming that rural telephone companies are in all instances better able to provide wireless services than other potential providers. The marketplace is best able to determine the most efficient and effective use for spectrum and rural customers will be best served if all carriers are allowed to compete on an equal footing.

The local telephone interests seek to have the Commission create rules in this proceeding that would undermine the ability of the marketplace to achieve the most efficient use for unused spectrum and might take away a licensee's ability to participate in such a marketplace. These parties are free to seek rights to unused spectrum by participating in the secondary markets process established by the Commission, but they are not entitled to special rights or privileges. The Commission should not penalize licensees that have purchased auctioned spectrum and complied with construction requirements in reliance on existing rules.

Requiring a licensee to enter a lease for its unused spectrum or otherwise forfeit the spectrum would certainly undermine the licensee's ability to negotiate a fair market price for sale of the spectrum. Thus, Nextel Partners does not believe that the Commission should adopt regulatory measures such as the ones proposed by UTStarcom that are aimed at *compelling* carriers to enter into leasing or other spectrum transactions whether they wish to do so or not.<sup>19</sup> Nextel Partners agrees emphatically with the position taken by AT&T Wireless that transactions involving spectrum leasing, license partitioning and/or disaggregation of spectrum should be completely voluntary on the

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<sup>19</sup> See UTStarcom Comments at 11.

part of the licensee.<sup>20</sup>

The Commission recognizes that wireless carriers have every incentive to expand their rural service as soon as economically feasible;<sup>21</sup> and they also have every incentive to obtain any available value from “unused” portions of spectrum, assuming that secondary market transactions are cost-efficient and not subject to undue regulation. The assessment of the market, the relative values of the various possible transactions, and other business issues involved in a particular spectrum transaction should be left to the licensee, who is best positioned to make crucial decisions involving licensed spectrum in a given situation, based on the facts peculiar to that situation and locale.<sup>22</sup>

Nextel Partners believes that maintenance of the Commission’s existing licensing approaches, coupled with the marketplace-oriented initiatives contained in the *Secondary Markets Rulemaking*, represents the best and most efficient alternative for encouraging service provision in rural areas. To the extent that the Commission does make significant changes to the regulatory environment in an attempt to encourage or facilitate a more rapid deployment of service to rural areas, however, Nextel Partners believes that it is important to apply any changes in a fair and even-handed manner.

#### **IV. Large Wireless Carriers Have Ample Incentive to Serve Rural Areas**

Commenters such as the National Telephone Cooperative Association (“NTCA”), BLF, OPASTCO/RTG and UTStarcom seek to create the impression that there is a

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<sup>20</sup> See AT&T Wireless Comments at 7.

<sup>21</sup> *Id.*; see also *Rural NPRM* at 8.

<sup>22</sup> Nextel Partners also supports the majority of commenters who believe that spectrum that is leased by a licensee should be considered “used” by the licensee for purposes of any relevant performance criteria or construction requirements applicable to the licensee. See, e.g., AT&T Wireless Comments at 8; BLF Comments at 7; CTIA Comments at 16; NRTC Comments at 6.

fundamental difference between larger, national wireless carriers and small rural telephone companies in terms of their ability and desire to serve consumers residing in rural areas. For example, NTCA declares, without any support, that “[l]arge carriers lack the motivation to service rural communities.”<sup>23</sup> UTStarcom complains, similarly without any evidence, that “large carriers cherry-pick their service areas,” covering only “high-density urban areas and travel routes.”<sup>24</sup>

These comments are incorrect in their marketplace assumptions. Nextel Partners is a nationwide carrier that has as its primary focus the smaller, mid-sized and tertiary areas, including rural and insular telecommunications markets. Indeed, Nextel Partners was created for the very purpose of serving these markets and bringing to them the same panoply of wireless services available over the Nextel system in urban areas. Nextel Partners’ growth and success over the last 5 years since its formation in 1999 demonstrates that larger carriers can and do serve rural areas successfully. Citizens in rural areas want and need the same range of wireless services that are available to urban citizens and Nextel Partners’ existence and success is proof of this fact. As noted by AT&T Wireless in its Comments, CMRS carriers have every incentive to serve as many customers as possible: the evidence is that rural areas as well as urban areas are *presently* benefiting significantly from robust competition among CMRS providers.<sup>25</sup>

Moreover, it is not apparent that rural telephone companies require any additional or special incentives to enable them to participate in provision of wireless service to rural areas. For example, the Commission has already considered, and rejected the possibility

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<sup>23</sup> NTCA Comments at 7.

<sup>24</sup> UTStarcom Comments at 12-13.

<sup>25</sup> AT&T Wireless Comments at 2.

that rural telephone companies should receive a bidding credit for spectrum auctions.<sup>26</sup> In addition, the Commission has noted that rural telephone companies have actively participated in spectrum auctions and “have had some success in winning licenses.”<sup>27</sup> The Commission has also determined that rural telephone companies do not appear to face a great deal of difficulty in capital formation, and (unlike other types of carriers) are able to seek below-market financing through the Department of Agriculture’s RUS program.<sup>28</sup>

The creation of “incentives” or coercive fixes specifically tailored for the benefit of rural telephone companies, on the other hand, would serve to put the large CMRS carriers at a competitive disadvantage vis-à-vis the rural telephone companies, which would make the Commission’s goals herein more difficult to achieve. In sum, the Commission should not favor rural telephone companies to the detriment of other types of carriers that vie for the rural consumer as a customer.

**V. Performance Criteria Or Benchmarks Should Not be Applied Differentially Based on the Size of the Geographic License Area**

Likewise, performance criteria or benchmarks should not be applied differently based on size of the geographic license, as some commenters suggest. For example, NTCA recommends that the “substantial service” alternative be applied only to *small* geographic areas, and that only licensees for larger geographic areas be subjected to the

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<sup>26</sup> See, e.g., *Amendment of Part I of the Commission’s Rules –Competitive Bidding Procedures, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15320-321, ¶¶ 51-52 (2000).

<sup>27</sup> See *Rural NOI* at ¶ 6.

<sup>28</sup> *Id.* at ¶ 17.



“keep what you use” standard.<sup>29</sup> In a similar vein, BLF asserts that the “substantial service” alternative should be limited to license areas smaller than a MTA,<sup>30</sup> and that no additional performance requirements should be placed on licensees for RSAs, BTAs or smaller partitioned areas. BLF generally contends that the Commission should limit any re-licensing efforts to geographic licenses that are MTA-sized and larger,<sup>31</sup> and asserts that the Commission *should* impose additional performance requirements upon renewal license terms for services that are licensed over MTA and larger-sized geographic areas.<sup>32</sup>

Nextel Partners disagrees with those commenters who seek to favor the interests of licensees of smaller geographic areas over licensees of larger areas based on the unsupported notion that the licensee of a smaller geographic area license is more likely to serve a rural territory. As the Commission has noted,

“[l]arge license areas . . . may enable nationwide carriers to compete with local or regional carriers in providing service to rural areas. Such large areas may also provide opportunities for new entrants to compete on a wide-area basis in an existing service.”<sup>33</sup>

Nextel Partners believes that the Commission should reject comments that seek preferential treatment for licensees of smaller geographic license areas while implementing additional punitive regulation for licensees of larger geographic areas. As already noted, to the extent that any party believes it could deploy an efficient use for unused rural spectrum licensed under a wider area license, that party can negotiate for access to that spectrum in the secondary market.

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<sup>29</sup> See NTCA Comments at 9-10.

<sup>30</sup> See BLF Comments at 17.

<sup>31</sup> See BLF Comments at 10.

<sup>32</sup> See BLF Comments at 18.

<sup>33</sup> *Rural NOI* at ¶ 19.

**VI. The Commission Should Use the Existing Service-Specific Rules to Determine the Size of Geographic License Areas**

NTCA, OPASTCO/RTG, BLF and UTStarcom contend that the Commission should focus on licensing spectrum in smaller geographic areas in order to facilitate acquisition of spectrum by smaller rural carriers.<sup>34</sup> BLF additionally proposes that at least one spectrum band in all future spectrum auctions be set aside for RSA-sized licenses.<sup>35</sup> There is no evidence, however, that such an approach will result in a more rapid or efficient deployment of wireless service to the rural consumer.

Nextel Partners agrees with those commenters who believe that the Commission should *not* make across-the-board changes that favor smaller geographic licensing areas, but instead should continue its existing policies that determine the appropriate size of a licensed service area on a service-by-service basis, rather than basing such decisions on whether the licenses are for rural or urban areas.<sup>36</sup> The Commission should therefore reject BLF's proposal to set aside a discrete spectrum band in all future spectrum auctions for RSA-sized licenses.

**VII. Relaxation of Limits on Power Levels in Rural Areas May Give Rise to Harmful Interference, Coordination Difficulties and Litigation Without Any Appreciable Offsetting Benefit**

Nextel Partners reiterates its position that the limits on power levels should not be relaxed in rural areas, due to interference issues and interoperability concerns arising when the mobile unit leaves the rural areas.<sup>37</sup> The essential question is whether it makes

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<sup>34</sup> NTCA Comments at 6; OPASTCO/RTG Comments at 7-11; BLF Comments at 22; UTStarcom Comments at 12-13.

<sup>35</sup> BLF Comments at 5-6.

<sup>36</sup> See AT&T Wireless Comments at 9.

<sup>37</sup> See also Comments of NTCA at 11; Comments of Itron, Inc. at 3.

sense to devolve additional control over the power levels of wireless transmitters and mobile units to the discretion of individual carriers, to allow them to increase their power levels over levels currently permitted by the technical rules in each service. Nextel Partners considers that to do so would create the possibility of significant interference problems, argumentative wrangling between carriers, and an additional volume of complaints before the Commission that would have to be resolved.

Even if the increased power levels could ultimately be engineered in a given situation to result in greater coverage by the implementing carrier without any undue incursion in other licensees' systems, it is probable that arriving at that point would require additional technical cooperation among licensees, and potential disagreements that could escalate to a troublesome level. Increased power levels may work well in one location due to terrain or other factors, and they might work poorly in others. Operations at higher power levels in some places may not be a problem in areas served by only one carrier, but may make subsequent competitive entry in that area difficult or troublesome. In addition, the potential interference to non-commercial users' systems, such as Public Safety entities, also needs to be considered. If carriers expend their available resources in contentious battles over interference issues or otherwise create harmful interference to other users, this is unlikely to facilitate increased service to the rural consumer: if anything, it will make provision of that service more expensive and troublesome.

Moreover, as the Commission pointed out in the *Rural NPRM*, it is not clear that increasing power levels will automatically result in better coverage or service to the rural consumer. Due to the "inverse square rule,"<sup>38</sup> signal levels decrease exponentially as a

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<sup>38</sup> In accordance with the inverse square rule, the intensity (or irradiance) of electromagnetic radiation is inversely proportional to the square of the distance traveled.

receiver moves further from the transmitter, and relatively large increases in power would yield only marginal increases in communications range.<sup>39</sup> The limited gains gleaned from increasing power levels are not worth incurring the difficulties of increased interference and problems with high-powered handset operation while “roaming” on a different system that is not comparably configured.

It is instructive to note that even those advocates of increasing power levels in this proceeding are careful to condition their support on ensuring that the power increases are not disruptive. For example, RCA opines that increased power levels should be permitted “wherever they can be used effectively,” but notes that interference problems and other issues “would have to be solved” by engineering.<sup>40</sup> NRTC contends that the Commission should allow relaxation of power limits, but that power increases “should be coupled with clear and enforceable interference protections.”<sup>41</sup>

The Commission should regard this relatively lukewarm support from the proponents of relaxed power levels as an indication that it is not the best way to facilitate rural coverage.<sup>42</sup>

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Thus, after electromagnetic radiation has traveled twice a given distance, the intensity drops by a factor of four.

<sup>39</sup> See *Rural NPRM* at ¶ 53.

<sup>40</sup> See RCA Comments at 10.

<sup>41</sup> NRTC Comments at 6.

<sup>42</sup> Nextel Partners also notes that it agrees with NTCA’s position that, particularly in the unlicensed bands, allowing carriers to raise power levels without spectrum management will tend to exacerbate interference problems and will result in making spectrum unreliable and unusable. See NTCA Comments at 11.

## **CONCLUSION**

In view of the foregoing, Nextel Partners respectfully requests that the Commission take action consistent with the views expressed herein.

Respectfully submitted,

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